

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CARL FOWLER

Claimant

VS.

QUESTAR SOFTWARE INC.

Respondent

AND

FARM BUREAU MUTUAL INSURANCE

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

DOCKET NO. 180,363

ORDER

ON the 10th day of March, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Shannon S. Krysl, dated February 8, 1994, came on before the Appeals Board for oral argument by telephone conference.

APPEARANCES

Claimant appeared by and through his attorney Douglas Johnson of Wichita, Kansas. Respondent and insurance carrier appeared by and through their attorney Dana Preheim of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney Kurt W. Ratzlaff of Wichita, Kansas.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the testimony from the Preliminary Hearing of February 8, 1994, and the exhibits introduced at the Hearing.

ISSUES

The Administrative Law Judge ruled for preliminary hearing purposes that claimant was entitled to medical benefits on the basis that claimant had aggravated a pre-existing condition. The Administrative Law Judge found the date of accident to be November 1992, as that was the last date claimant had worked at NCR as a consultant. The respondent appeals the Judge's order and alleges that the Judge has erred in finding that claimant suffered an accidental injury arising out of and in the course of his employment, and in finding that the date of accident is November 1992. These are the issues now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) The Appeals Board finds that the Administrative Law Judge was correct in finding that for preliminary hearing purposes claimant has experienced personal injury by accident arising out of and in the course of his employment with the respondent.

Claimant's medical history indicates that he was extremely ill eleven to twelve years ago. Claimant recovered from that illness and was able to return to work full-time. In January of 1991, claimant developed symptoms representative of temporomandibular joint (TMJ) syndrome and sought treatment from Doctors Van Strickland and Drazek. In her letter in January of 1991 to Dr. Van Strickland, Dr. Drazek noted that claimant had a one and one-half year history of cervical stiffness, and recommended that he participate in physical therapy including TMJ exercises, cervical stretching, and postural exercises. Claimant's condition improved and he had returned to full-time work by summer or early fall of 1991.

In October 1991, claimant incorporated the respondent, Questar Software Inc., in order to work as a consultant at NCR. Claimant developed software for NCR and spent vast periods of time at a computer terminal. Within one or two months of October 1991, claimant began experiencing symptomatology that progressively worsened through 1992. In November 1992, NCR terminated all of its consultants, including claimant. However, NCR immediately contacted claimant and requested him to return to work. Claimant declined this offer due to his health as he felt he could not handle the workload. By the end of 1992, claimant's symptomatology was significantly worse than it was in 1991. During 1992, claimant experienced progressive worsening of neck and back pain, and other symptomatology believed related to TMJ. Claimant testified that working at a computer station aggravated his condition.

On April 8, 1993, claimant consulted Wichita physician Mary A. Lynch, M.D., and reported complaints of neck, jaw, and shoulder pain with radiation down into the little fingers in both upper extremities. Dr. Lynch found significant trapezial and paracervical strain with underlying weakness in the rotator cuff. Dr. Lynch believes claimant's symptoms are a common phenomena in individuals who work at computer stations. Dr. Lynch felt the natural history of chronic paracervical strain often leads into TMJ syndrome, and that working at a computer station would certainly aggravate any pre-existing TMJ syndrome.

Based upon the above, the Appeals Board finds that claimant has experienced personal injury by accident arising out of and in the course of his employment with the respondent.

- (2) The Appeals Board finds for preliminary hearing purposes the date of accident to be November 1992.

The medical history indicates that claimant's symptomatology had significantly worsened by November 1992 when he was terminated by NCR as a consultant. Due to his significant health problems at that time, claimant declined an offer from NCR to return to work for them because he felt he was physically unable to perform the job. The evidence indicates that since November 1992, claimant has worked at home in order to control his working environment and the pace at which he performs his job duties. Claimant's time records indicate that as of November 1992, there is a significant drop in the number of hours that he worked and a corresponding drop in claimant's income.

Based upon the above, the Appeals Board affirms the Administrative Law Judge's determination that personal injury by accident occurred in November 1992.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated February 8, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of April, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Douglas Johnson, 727 N. Waco, Suite 585, Wichita, KS 67203
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Shannon S. Krysl, Administrative Law Judge

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George Gomez, Director